EQUITY—UNFAIR COMPETITION—"MUTT AND JEFF" PROTECTED FROM "PIRACY."—Complainant was the originator of a "comic strip" popularly known as the "Mutt and Jeff" cartoons. These cartoons were copyrighted in the complainant's name and published in the *San Francisco Examiner.* Later the complainant continued the series under contract with the defendant, publisher of the *New York American.* At the expiration of this contract the complainant agreed to continue the series for a syndicate and the defendant prepared to imitate the "Mutt and Jeff" strip in a manner likely to deceive the public into thinking the cartoons were the complainant's. In a suit to restrain this imitation, *held,* defendant enjoined from use of words "Mutt" or "Jeff" and from publishing cartoons so like complainant's as to deceive. *Fisher* v. *Star Co.* (N. Y., 1921), 132 N. E. 133.

The decision is based squarely upon the jurisdiction of courts of equity to restrain unfair competition, no reliance being placed either upon copyright law or trade-mark law. The great majority of cases have had to do with unfair competition in the manufacture and sale of goods. The leading authority for the protection of intangible property from unfair competition is *International News Service* v. *Associated Press,* 248 U. S. 215, in which the defendant was enjoined from "pirating" news gathered by complainant and passing it off as its own in competition with the complainant. This case has been said by some to stand for the broad proposition that no one shall be permitted to appropriate to himself the fruits of another's labor. 32 HARV. L. REV. 566. However valuable as an ethical concept, such a sweeping proposition is hardly maintainable as a matter of law. 13 ILL. L. REV. 708; 18 MICH. L. REV. 415; *Bristol* v. *Equitable Assurance Society,* 132 N. Y. 264. In the instant case the court, with admirable discretion, refrained from laying down any broad doctrine, preferring to decide each case on its particular set of facts. The threatened imitation was found to be essentially unfair to the complainant, and no good would accrue to the public from refusing the injunction. It is to be noted that the instant case differs from the *Associated Press case* in that here there is the typical "passing off" element, the defendant passing off its own work as the complainant's, whereas in the *Associated Press* case defendant was publishing complainant's news as its own. See 51 NAT. CORP. REP. 242 for comment on previous litigation between the parties in the instant case.

EVIDENCE—TRIALS—WHEN A COURT MAY DIRECT A VERDICT.—In a suit for violating an agency contract, the defendant attempted to prove that the provision in question had been orally waived or annulled. The evidence of the existence of the provision was so preponderant that no other conclusion was reasonably admissible. *Held,* the court erred in refusing to instruct the jury to return a verdict for the plaintiff. *Agricultural Ins. Co.* v. *Higginbotham* (1921), 274 Fed. 316.

At one time there was a rule to the effect that a mere scintilla of evidence was sufficient to require a determination by the jury, but this has been abandoned by most courts, the federal and various state courts holding that the test for direction of a verdict by the judge is the same as on a motion

after verdict to set it aside as being against the overwhelming weight of evidence. *Schofield* v. *Chicago M. & St. P. Ry. Co.*, 114 U. S. 615; *Gunther* v. *Liverpool & London & Globe Ins. Co.*, 134 U. S. 110; *Fornes & Co.* v. *Wright, Baldwin & Haldane*, 91 Ia. 392; *Market and Fulton Nat. Bank* v. *Sargent*, 85 Me. 349. See also THOMPSON ON TRIALS, Sec. 2245. However, the refusal of the New York court in *McDonald* v. *Metropolitan St. Ry. Co.*, 167 N. Y. 66, to accept such a test as that laid down by the federal courts would seem to be well founded, inasmuch as setting aside a verdict involves a matter of remedy and procedure and gives a retrial by another jury, whereas a direction of a verdict is a matter of substantive and substantial rights and is generally final. The latter is in effect a ruling that as a matter of law the party can or cannot recover, whereas a verdict may be set aside and a new trial granted because it seems to the court that the preponderating weight of the evidence is the other way and that an opportunity should be given for the reweighing of the evidence on another trial. Between those views lie the decisions of courts recognizing different amounts of evidence as sufficient to require determination by the jury, such as "evidence tending to prove," *Offutt* v. *The World's Columbian Exposition*, 175 Ill. 472; "evidence from which, when undisputed, a finding would be justified," *Ohio & Miss. Ry. Co.* v. *Dunn*, 138 Ind. 18; "evidence legally sufficient to warrant a verdict," *Catlett* v. *Ry. Co.*, 57 Ark. 461; "where as a matter of law no question of credibility or issue of fact remains," *McDonald* v. *Metropolitan St. Ry. Co., supra.* As will be seen from an examination of the authorities, no clear-cut rules can be laid down for the determination of all cases, inasmuch as the weight of evidence differs in imperceptible degrees and is never precisely the same. But all courts would no doubt hold that where there is no evidence tending to prove the constituent facts set up by the party sustaining the burden of proof, or where the evidence is undisputed and conclusive one way, the court should direct a verdict. *Gustafson* v. *Eger*, 126 Mich. 454; *Scott* v. *Nickum*, 193 Pa. 371; *Woodward* v. *Chicago, M. & St. P. Ry. Co.*, 145 Fed. 577; *Toomey* v. *B. & S. C. Ry. Co.*, 3 C. B. (n. s.) 146; *Wakelin* v. *London & S. W. Ry. Co.*, L. R. 12 App. Cases 41. "No evidence" has been interpreted as meaning "none that ought reasonably to satisfy the jury that the fact sought to be proved is established." *Ryder* v. *Wombwell*, L. R. 4 Exch. 32, reaffirmed in *Metropolitan R. Co.* v. *Jackson*, L. R. 3 App. Cases 193; *State* v. *Prince* (N. Car., 1921), 108 S. E. 330. Certainly there should be no question for the jury if the probative force of the evidence is so weak that it raises only a mere surmise or suspicion of the fact sought to be established. *Joske* v. *Irvine*, 91 Tex. 574. As said in *State* v. *Prince, supra*, "the legal sufficiency of proof and the moral weight of legally sufficient proof are very distinct within the conception of the law. The first lies within the province of the court, the last within that of the jury. The province of the jury should not be invaded in any case, and when reasonable minds, acting within the limitations prescribed by the rule of law, might reach different conclusions, the evidence must be submitted to the jury."